

OK to enter 6/28/07

USSN 10/052,798

Response and Amendment Under §1.116 and

Contingent Suggestion for Declaration of Interference under 37 C.F.R. § 41.202

REMARKS

I. Response to January 25, 2007, Office Action

Claims 59, 60, 65, 66, 69-74, 79, 125, 127-129, 133, 135-137, and 147-155 are pending in the application. No substantive claim amendments (a grammatical error was corrected in Claim 65, *See* corresponding claim amendment) and no new claims are being presented in response to the Office Action. The amendment to claim 65 presents no new matter.

Claims 59, 60, 65, 66, 69-74, 79, 125, 127-129, 133, 135-137, and 147-155 are currently rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Application Publication No. 20040136951 to Ni et al. (hereinafter referred to as "the Ni '951 publication").

The Examiner has previously determined that Applicants' pending claims have an effective filing date of May 15, 1997. (*See, e.g.*, Office Action mailed June 27, 2006, p. 2). However, the Examiner maintains that the Ni '951 publication's effective filing date is March 17, 1997, the filing date of provisional application 60/040,846 ("the '846 application"), to which the Ni '951 publication claims priority under 35 U.S.C. § 119(e). Applicants traverse the Examiner's rejection of the pending claims under § 102(e) for at least the reasons set forth below.

On August 31, 2005, the Board of Patent Appeals and Interferences ("the Board") declared Interference No. 105,361 ("the '361 Interference") between U.S. Patent No. 6,872,568 to Ni et al. ("the '568 patent") and U.S. Application No. 10/423,448 to Adams et al. ("the '448 application"). Count 1 of the '361 Interference (claim 21 of Ni's '568 patent [claim 134 of Adams' '448 application]) is directed to an isolated monoclonal antibody or fragment thereof that specifically binds to a protein consisting of amino acid residues 1 to 133 of SEQ ID NO:2 [or 52 to 184 of SEQ ID NO:1] wherein said antibody or fragment thereof is an antagonist of the